

Short Title: GSC Postponement/Judicial & Execution Sales.

A BILL TO BE ENTITLED

AN ACT TO ALIGN CERTAIN REQUIREMENTS FOR THE POSTPONEMENT OF
JUDICIAL SALES AND EXECUTION SALES WITH THE REQUIREMENTS FOR
POSTPONEMENT OF SALES AUTHORIZED UNDER POWER OF SALE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-339.20 reads as rewritten:

"§ 1-339.20. Public sale; postponement of sale.

(a) ~~A Notwithstanding G.S. 45-21.2, a~~ person authorized to hold a public sale by auction
may postpone the ~~sale to a day certain not later than six days, exclusive of Sunday, after the~~
~~original date for the~~ sale, and a person authorized to hold a public sale of timber by sealed bid
may postpone the time for submitting and opening bids ~~to a date, time, and place certain not later~~
~~than six days, exclusive of Sunday, after the original date for the opening of bids;~~ in accordance
with G.S. 45-21.21(a).

(1) ~~When there are no bidders, or~~

(2) ~~When, in his judgment, the number of prospective bidders at the sale is~~
~~substantially decreased by inclement weather or by any casualty, or~~

(3) ~~When there are so many other sales advertised to be held at the same time and~~
~~place as to make it inexpedient and impracticable, in his judgment, to hold the~~
~~sale on that day, or~~

(4) ~~When he is unable to hold the sale because of illness or for other good reason,~~
~~or~~

(5) ~~When other good cause exists.~~

(b) Upon postponement of public sale the person authorized to hold the sale shall
personally, or through ~~his~~ the person's agent or ~~attorney~~ attorney, do all of the following:

- (1) At the time and place advertised for the sale or for the opening of sealed bids, publicly announce the ~~postponement thereof;~~postponement.
- (2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy thereof posted,~~sale, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement;~~and postponement.
- (3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person ~~who~~that submitted a bid.
- (c) The notice of postponement ~~shall;~~shall be signed by the person authorized to hold the sale, or by the person's agent or attorney, and shall state the following:
- (1) ~~State that~~That the sale is ~~postponed;~~postponed.
- (2) In the case of a sale by public auction, ~~state~~ the hour and date to which the sale is ~~postponed;~~postponed.
- (2a) In the case of a sale of timber by sealed bid, ~~state~~ the date, time, and place to which the opening of bids is ~~postponed;~~postponed.
- (3) ~~State the~~The reason for the ~~postponement;~~and postponement.
- (4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~
- (d) If a public sale is not held at the time fixed ~~therefor~~for the sale and is not postponed as provided by this section, ~~or if a postponed sale is not held at the time fixed therefor,~~ the person authorized to make the sale shall report ~~the~~these facts ~~with respect thereto~~ to the judge or clerk of court having jurisdiction, who shall ~~thereupon~~ make an order for the public sale of the property to be held at such time and place and upon such notice to be given in such manner and for such length of time as ~~he~~the judge or clerk deems advisable."

[Staff Notes:
The text of G.S. 45-21.21 is in Section 3 of this draft.

1 *An alternative approach would be to mirror the relevant language in G.S. 45-21.21, rather than*
2 *reference it. This approach would maintain the current self-containment of each of the three*
3 *sales articles. Existing references in each sales article are specific to that article, with nearly all*
4 *of them being internal references.*

5 *Should language be added to the statute to provide that a postponement shall not be otherwise*
6 *inconsistent with the terms of the court order corresponding to the judicial sale?*

7
8 *Background Statutes:*

9 ***"§ 1-339.1. Definitions.***

10 (a) *A judicial sale is a sale of property made pursuant to an order of a judge or clerk in*
11 *an action or proceeding in the superior or district court, including a sale pursuant to an order*
12 *made in an action in court to foreclose a mortgage or deed of trust, but is not*

13 (1) *A sale made pursuant to a power of sale*

14 a. *Contained in a mortgage, deed of trust, or conditional sale contract,*
15 *or*

16 b. *Granted by statute with respect to a mortgage, deed of trust, or*
17 *conditional sale contract, or*

18 (2) *A resale ordered with respect to any sale described in subsection (a)(1), where*
19 *such original sale was not held under a court order, or*

20 (3) *An execution sale, or*

21 (4) *A sale ordered in a criminal action, or*

22 (5) *A tax foreclosure sale, or*

23 (6) *A sale made pursuant to Article 15 of Chapter 35A of the General Statutes,*
24 *relating to sales of estates held by the entireties when one or both spouses are*
25 *mentally incompetent, or*

26 (7) *A sale made in the course of liquidation of a bank pursuant to Article 9 of*
27 *Chapter 53C of the General Statutes, or*

28 (8) *A sale made in the course of liquidation of an insurance company pursuant to*
29 *Article 30 of Chapter 58 of the General Statutes, or*

30 (8a) *A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or*
31 *G.S. 35A-1252(14), unless any order thereunder requires, or*

32 (9) *Any other sale the procedure for which is specially provided by any statute*
33 *other than this Article.*

34 (b) *As hereafter used in this Article, "sale" means a judicial sale."*

35 ***"§ 45-21.2. Article not applicable to foreclosure by court action.***

36 *This Article does not affect any right to foreclosure by action in court, and is not applicable*
37 *to any such action."*

38
39 **SECTION 2. G.S. 1-339.58 reads as rewritten:**

40 **"§ 1-339.58. Postponement of sale.**

41 (a) ~~The Notwithstanding G.S. 45-21.2, the~~ sheriff may postpone the sale ~~to a day certain~~
42 ~~not later than six days, exclusive of Sunday, after the original date for the sale:~~ in accordance with
43 G.S. 45-21.21(a).

44 ~~(1) When there are no bidders,~~

- (2) ~~When, in the sheriff's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty,~~
- (3) ~~When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in the sheriff's judgment, to hold the sale on that day,~~
- (4) ~~When the sheriff is unable to hold the sale because of illness or for other good reason, or~~
- (5) ~~When other good cause exists.~~
- (b) Upon postponement of ~~a~~ the sale, the sheriff ~~shall~~ shall do all of the following:
- (1) At the time and place advertised for the sale, publicly announce the postponement of the ~~sale; and~~ sale.
- (2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy of the notice, sale,~~ posted as provided by G.S. 1-339.52 in the case of real property or G.S. 1-339.53 in the case of personal property, a notice of the postponement.
- (c) The posted notice of postponement ~~shall~~ shall be signed by the sheriff and shall state the following:
- (1) ~~State that~~ That the sale is ~~postponed,~~ postponed.
- (2) ~~State the~~ The hour and date to which the sale is ~~postponed,~~ postponed.
- (3) ~~State the~~ The reason for the ~~postponement, and~~ postponement.
- (4) ~~Be signed by the sheriff.~~
- (d) If a sale is not held at the time fixed for the sale and is not postponed as provided by this section, ~~or if a postponed sale is not held at the time fixed for the sale,~~ the sheriff shall report ~~the these~~ facts ~~with respect thereto~~ to the clerk of the superior court, who shall ~~thereupon~~ make an order for the sale of the property to be held at such time and place and upon such notice to be

given in the manner and for the length of time as the clerk of the superior court deems advisable,
but nothing in this section relieves the sheriff of liability for the nonperformance of the sheriff's
official duty."

[Staff Note:

There is a 90 day statutory deadline for execution sales not applicable to judicial sales or sales
under power of sale, as noted in G.S. 1-310 below. Because of the highlighted language in G.S.
1-339.48, this does not create a direct conflict with an additional 90 day postponement but is
noted for your consideration.

"§ 1-310. When dated and returnable.

Executions shall be dated as of the day on which they were issued, and shall be returnable to
the court from which they were issued not more than 90 days from said date, and no executions
against property shall issue until 10 days after entry of judgment."

"§ 1-339.48. Life of execution.

If an execution is issued on a judgment, within the time provided by G.S. 1-306, and a sale,
by authority of that execution, is commenced within the time provided by G.S. 1-310, the sale,
including any resale, may be had and completed even though such sales, resales or other
procedure are had after the time when the execution is required to be returned by G.S. 1-310, or
after the time within which an execution could be issued with respect to such judgment pursuant
to the provisions of G.S. 1-306. For the purpose of this section, a sale is commenced when the
notice of sale is first published in the case of real property as required by G.S. 1-339.52, or first
posted in the case of personal property as required by G.S. 1-339.53."]

[SECTION 3. G.S. 45-21.21 reads as rewritten:

"§ 45-21.21. Postponement of sale; notice of cancellation.

(a) ~~Any~~ If any of the following occurs, any person exercising a power of sale may
postpone the sale to a day certain not later than 90 ~~days, exclusive of Sunday, days~~ after the
original date for the ~~sale—sale, exclusive of Sunday and legal holidays when the courthouse is~~
closed for transactions:

(1) ~~When there~~ There are no ~~bidders, or bidders.~~

(2) ~~When, in his~~ In the person's judgment, the number of prospective bidders at
the sale is substantially decreased by inclement weather or by any ~~casualty,~~
~~or casualty.~~

(3) ~~When there~~ There are so many other sales advertised to be held at the same
time and place as to make it inexpedient and impracticable, in ~~his—the person's~~
judgment, to hold the sale on that ~~day, or day.~~

(4) ~~When he~~The person is unable to hold the sale because of illness or for other good ~~reason, or~~reason.

(5) ~~When other~~Other good cause exists.

The person exercising a power of sale may postpone the sale more than once whenever any of ~~the above these~~ conditions are met, so long as the sale is held not later than 90 days after the original date for the ~~sale,~~sale, exclusive of Sunday and legal holidays when the courthouse is closed for transactions.

(b) Upon postponement of a sale, the person exercising the power of sale shall personally, or through ~~his the person's~~ agent or ~~attorney—attorney, do all of the following:~~

(1) At the time and place advertised for the sale, publicly announce the ~~postponement thereof;~~postponement.

(2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy thereof,—sale,~~ posted ~~at the courthouse door,~~ as provided by G.S. ~~45-21.17,45-21.17(1)a.,~~ a notice of the ~~postponement; and~~postponement.

(3) Give written or oral notice of postponement to each party entitled to notice of sale under G.S. 45-21.17.

(c) The posted notice of postponement ~~shall—~~shall be signed by the person authorized to hold the sale, or by the person's agent or attorney, and shall state the following:

(1) ~~State that That~~ the sale is ~~postponed,~~postponed.

(2) ~~State the The~~ hour and date to which the sale is ~~postponed,~~postponed.

(3) ~~State the The~~ reason for the ~~postponement, and~~postponement.

(4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~

(d) ~~If a sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the date originally fixed for the sale, then prior to such sale taking place the provisions of G.S. 45-21.16~~

~~need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall~~
~~be again complied with, or if on appeal, the appellate court orders the sale to be held, as to such~~
~~sale so authorized the provisions of G.S. 45-21.16 need not be complied with again but those of~~
~~G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be.~~ If a sale is not held at the time fixed for the
sale and is not postponed as provided by this section, or if on appeal, the appellate court orders a
sale to be held, then prior to the sale taking place, G.S. 45-21.16 does not apply, but
G.S.45-21.16A, 45-21.17, and 45-21.17A again apply.

~~(e) — A sale may be postponed more than once provided the final postponed sale date is not~~
~~later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed for~~
~~transactions, after the original date for the sale.~~

(f) Repealed by Session Laws 2019-243, s. 26(a), effective November 6, 2019.

(g) If it is determined that the sale cannot be held in accordance with this section or is
postponed pursuant to this section, then the person exercising the power of sale shall,
immediately upon determining that the sale will not occur and prior to the scheduled time of the
sale, deliver a written notice to the ~~Clerk of Superior Court~~ clerk of superior court that is to
include all of the following:

(1) The case number assigned by the ~~Clerk~~ clerk.

(2) The ~~mortgagor(s) and record owner(s) name(s)~~ name of each mortgagor and
record owner.

(3) The United States Postal Service address of the property or, if no address has
been assigned, a brief description of the location of the property.

(4) The originally scheduled date and time for the sale.

(5) A statement that the foreclosure sale has been withdrawn, rescheduled for a
specific date and time, or postponed with no date yet set, as appropriate.

(h) If the notice required by subsection (g) of this section is not received by the ~~Clerk~~clerk prior to the scheduled time of the sale, then the person exercising the power of sale shall personally, or through ~~his or her~~the person's agent or attorney, do all of the following:

(1) At the time and place advertised for the sale, publicly announce the ~~cancellation thereof;~~cancellation.

(2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy thereof, — sale, —~~ posted ~~at the courthouse door,~~ as provided by G.S. ~~45-21.17;~~45-21.17(1)a., a notice of the ~~cancellation;~~cancellation.

(3) Give written or oral notice of cancellation to each party entitled to notice of sale under G.S. ~~45-21.17; and~~45-21.17.

(4) Hand-deliver the written notice required under subdivision (2) of this subsection to the ~~Clerk's~~clerk's office.

(i) So that the notice required by subsection (g) of this section may be delivered in the time frame ~~required therein;~~required, the ~~Clerk's~~clerk's office shall, upon request, provide to the person exercising the power of sale an ~~e-mail~~email address ~~and/or~~ fax telephone ~~number~~number, or both, to use for delivery of ~~said~~ notices.

(j) Should the ~~Clerk's~~clerk's office be unexpectedly closed on the day of the sale, the requirements of ~~this~~ subsection ~~shall be~~(g) of this section are delayed until the next day the ~~Clerk's~~clerk's office is open for transactions.

(k) All notices of a scheduled foreclosure sale, withdrawal of a scheduled sale, or postponement of a scheduled sale shall, on the day of receipt by the ~~Clerk,~~clerk, be posted by the person exercising the power of sale in the location at the county courthouse normally used for the posting of public notices. If a scheduled sale has been withdrawn, ~~that the~~ notice shall remain in ~~that the~~ location for no less than 30 days. If the sale has been postponed, ~~that the~~ notice

shall remain in ~~that~~the location until it is replaced by a notice of a rescheduled sale or of a withdrawn sale.

(l) The delivery of notices required by this section in no way removes any responsibility of any party to file documents with the ~~Clerk~~clerk as required elsewhere by law.

(m) A clerk of superior court may report habitual noncompliance with ~~this~~ subsection (g) of this section to the Administrative Office of the Courts."]

[Staff Note:
Changes to G.S. 45-21.21 are not required for this draft, but these clean-up changes are included for your consideration.

Background Statute:

§ 45-21.17. Posting and publishing notice of sale of real property.

In addition to complying with such provisions with respect to posting or publishing notice of sale as are contained in the security instrument,

(1) *Notice of sale of real property shall*

a. *Be posted, in the area designated by the clerk of superior court for posting public notices in the county in which the property is situated, at least 20 days immediately preceding the sale.*

b. *And in addition thereto,*

1. *The notice shall be published once a week for at least two successive weeks in a newspaper published and qualified for legal advertising in the county in which the property is situated.*

2. *If no such newspaper is published in the county, then notice shall be published once a week for at least two successive weeks in a newspaper having a general circulation in the county.*

3. *In addition to the required newspaper advertisement, the clerk may in his discretion, on application of any interested party, authorize such additional advertisement as in the opinion of the clerk will serve the interest of the parties, and permit the charges for such further advertisement to be taxed as a part of the costs of the foreclosure.*

(2) *When the notice of sale is published in a newspaper,*

a. *The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than seven days, including Sundays, and*

b. *The date of the last publication shall be not more than 10 days preceding the date of the sale.*

(3) *When the real property to be sold is situated in more than one county, the provisions of subdivisions (1) and (2) shall be complied with in each county in which any part of the property is situated.*

(4) *The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S.*

1 45-21.16 whose address is known to the trustee or mortgagee and in addition
2 shall also be mailed by first-class mail to any party desiring a copy of the
3 notice of sale who has complied with G.S. 45-21.17A. If the property is
4 residential and contains less than 15 rental units, including single-family
5 residential real property, the notice of sale shall also be mailed to any person
6 who occupies the property pursuant to a residential rental agreement by
7 name, if known, at the address of the property to be sold. If the name of the
8 person who occupies the property is not known, the notice shall be sent to
9 "occupant" at the address of the property to be sold. Notice of the hearing
10 required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of
11 notice under this section provided such notice contains the information
12 required by G.S. 45-21.16A.

13 (5) Repealed by Session Laws 1993, c. 305, s. 10.

14 (6) Any time periods relating to notice of hearing or notice of sale that are
15 provided in the security instrument may commence with and run concurrently
16 with the time periods provided in G.S. 45-21.16, 45-21.17, or 45-21.17A."]
17

18 **SECTION 4.** This act is effective when it becomes law and applies to sales noticed

19 on or after that date.